Crl.Misc.No.55250 M of 2004

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Babli Vs. Haman Kumar

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. Anupam Bhardwaj, Advocate,
for the respondent.

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The present Miscellaneous Petition is directed against the order dated 23.7.2004, Annexure P-6, passed by Sub Divisional Judicial Magistrate, Jagraon, whereby he has discharged Haman Kumar while finding prima-facie case against Harbhajan Singh, Roop Lal, Arja Singh, Teja Singh and Jagjit Kumar under Sections 467, 471, 420 and 120-B IPC. While discharging respondent, Haman Kumar, the Court has observed that only evidence led by the complainant is that the sale deed dated 3.8.2000 was got registered by all the five accused named above in connivance with each other at the instance of Haman Kumar. It was noticed that Haman Kumar had not put his signatures on the sale deed and he was sought to be involved only on the basis of oral assertion that this sale deed was at his instance. Learned counsel for the petitioner submits that there cannot be any other evidence except the oral account to indicate conspiracy. Such things, as per the counsel, are done in secrecy and is to be decided on the basis of oral account given by the witnesses. In support of his submissions, he has placed reliance on ***Damodar Vs. State of Rajasthan***, 2003 (4) R.C.R. (Criminal) 354 wherein it is observed by the Hon'ble Supreme Court that the conspiracies are not

hatched in open and by its very nature, they are secretly planned. It is further observed that these can be proved even by circumstantial evidence and that lack of direct evidence relating to conspiracy has no consequence. There is no dispute with this proposition of law. Nowhere, the Hon'ble Supreme Court has said that conspiracy can only be proved by an oral account. There is no circumstantial or other evidence either pointed out by counsel or led before the trial Court to prove conspiracy. Merely because it is vaguely averred in the complaint or stated in evidence that the sale deed was registered at the instance of one person would not go to indicate conspiracy.

The counsel then contends that the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Mohan Lal Soni,*** 2000 (3) R.C.R. (Criminal) 452 observed that at the time of framing of charge, only prima-facie evidence is to be seen and it is not required to be analyzed minutely otherwise. The finding by the trial Court is that there is no prima-facie case revealed against Haman Kumar. Finding prima-facie case against other persons who were signatory to the sale deed, they stand summoned. No material or evidence otherwise is pointed out, which may indicate that prima-facie case is made out against Haman Kumar. No fault is noticed in the finding of the Court which may call for interference.

Dismissed.

March 22, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**